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Nos. 84-418, 84-406

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

OAKLAND-ALAMEDA COUNTY COLISEUM, INC.,
Petitioner,

v.

OAKLAND RAIDERS, LTD., AND
LOS ANGELES MEMORIAL COLISEUM COMMISSION,
Respondents.

NATIONAL FOOTBALL LEAGUE, ET AL.,
Petitioners,

v.

OAKLAND RAIDERS, LTD., AND
LOS ANGELES MEMORIAL COLISEUM COMMISSION,
Respondents

BRIEF FOR THE MAYOR AND CITY COUNCIL OF BALTIMORE AS AMICUS CURIAE SUPPORTING PETITIONERS

BENJAMIN L. BROWN,
City Solicitor,

* AMBROSE T. HARTMAN,
Deputy City Solicitor,

L. WILLIAM GAWLIK,
Assistant City Solicitor,
City Hall,
Baltimore, Maryland 21202
(301) 396-3298,

Attorneys for Mayor and
City Counsel of Baltimore,
Amicus Curiae.

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* *Counsel of Record*

The Daily Record Co., Baltimore, MD 21202

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INTEREST OF THE AMICUS CURIAE

The Mayor and City Council of Baltimore ("Baltimore") is a political subdivision of the State of Maryland.[1] Baltimore is the designated "home territory" of the Baltimore Football Club, Inc., according to the Constitution and By-Laws of the National Football League

[1] This amicus curiae brief is filed pursuant to Supreme Court Rule 36.4.

("NFL"). The Baltimore Football Club, Inc. ("Club"),[2] known as the "Baltimore Colts," played its home games in Baltimore from 1947 until the end of the NFL's 1983-84 season. Throughout that period of time, Baltimore provided for the Club and other lessees the myriad services required to operate a stadium.

In the late evening of March 28, 1984, despite public statements promising that the Baltimore Colts would not leave Baltimore, the Baltimore Football Club, Inc., relocated some of its tangible property to Indianapolis, Indiana, and held itself out as the "Indianapolis Colts" team. The Club is currently playing its home games in Indianapolis' Hoosier Dome.

Baltimore has filed an action to condemn the franchise which was granted to the Club by the NFL.[3]

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[2] Baltimore Football Club, Inc., is a member of the National Football League, and a petitioner here.

[3] *Mayor and City Council of Baltimore v. Baltimore Football Club, Inc.*, No. B84-1294 (D. Md.). The Club has attempted to interplead Baltimore's action with the "claims" of the Capital Improvements Board of Marion County under the Board's lease with the "Indianapolis Colts." *Indianapolis Colts v. Mayor and City Council of Baltimore*, No. IP 84-652-C (S. D. Ind.), *stay of injunction issued*, 733 F.2d 484 (7th Cir.), *application for order vacating stay denied*, No. A-1014 (U.S., June 14, 1984), *order granting injunction rev'd*, No. 84-1649 (7th Cir., August 10, 1984). The Club has filed an action pursuant to 42 U.S.C. 1983, *Indianapolis Colts v. Mayor and City Council of Baltimore*, No. B84-2560. The bankruptcy petition filed against the Club in the United States District Court for the District of Maryland, Bankruptcy Unit, has been dismissed. *In re Baltimore Football Club, Inc.*, No. 84-B-0528 (D. Md.).

REASONS FOR GRANTING THE WRIT

I. Nature of the National Football League's Restraint.

This case[4] originated from the desire of the Oakland Raiders football team to relocate to the Los Angeles area, despite Oakland's unflagging commitment to the Raiders for more than fifteen years. In the words of Edward Bennett Williams, owner of the Baltimore Orioles, "Teams are held in trust for the cities where they function."[5] The special status which is accorded to professional sports teams is derived in part from the predictable way in which

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[4] Baltimore is filing this brief amicus curiae in support of the petition for writ of certiorari filed by the National Football League ("NFL") and the petition of Oakland-Alameda County Coliseum, Inc., ("Oakland"), with respect to questions three, four and five presented therein. The third question presented by Oakland is stated:

> "Whether under a rule of reason analysis in an action by a member team against a sports league under Section 1 of the Sherman Act, the jury is precluded from considering public interest factors that indirectly promote competition in assessing any competitive impact of league controls of franchise locations."

Petition for a Writ of Certiorari, *Los Angeles Memorial Coliseum Commission v. National Football League*, 726 F.2d 1381 (9th Cir. 1984), *petition for cert. filed*, 53 U.S.L.W. 3242 (October 2, 1984) (No. 84-418) (the "Oakland Petition"). The fourth question in the Oakland Petition is stated:

> "Whether under a rule of reason analysis in an action by a member team against a sports league under Section 1 of the Sherman Act, the jury is precluded from considering the pro-competitive benefits in the local market abandoned by the team seeking to move and may only consider the asserted pro-competitive benefits in the local market to which the team seeks to move."

The public interest and local pro-competitive questions are addressed here in Section II. The fifth question presented in the Oakland Petition is addressed jointly in Section I with the singular question presented by the NFL.

[5] *Profession Sports Antitrust Immunity*, Hearings Before the Committee on the Judiciary of the United States Senate, 97th Cong., 2d Sess., at 224 (Statement of the Honorable William Donald Schaefer, September 16, 1982).

teams within the league are allowed to operate. The NFL controls various aspects of the conduct of member teams, especially the element at issue here — the prohibition against relocating a team except as provided by the NFL's Constitution and By-Laws.

The provision in the NFL's Constitution which controls the relocation of franchises requires that a team contemplating relocation receive prior "approval by the affirmative vote of three-fourths of the existing member clubs of the League." NFL Constitution and By-Laws, Section 4.3; Petition for a Writ of Certiorari, *Los Angeles Memorial Coliseum Commission v. National Football League,* 726 F.2d 1381 (9th Cir.), *petition for cert. filed,* 53 U.S.L.W. 3242 (October 2, 1984) (No. 84-406) (the "NFL Petition") at p. 3. Such a provision is essential to the proper operation of the league, which is an industry providing profound economic and collateral benefits to its "designated cities."[6]

Baltimore believes that the NFL's right to designate a "home territory" pursuant to its Constitution and By-Laws, and its obligation to allow the relocation of any franchise only as set forth therein, are essential to the continued existence of professional football. It is only through the League's regulation of its members that fans develop the level of interest and enthusiasm in professional football which justifies the commitment of public resources to the sport. Without the expenditure of public money to finance stadia and the services which the exhibition of public events requires, professional football would never have existed in Baltimore.

Retaining the status of a "designated city" imposes considerable burdens on the city or locale which benefits

[6] An NFL member "holds a franchise from the League to operate a professional football club in a *designated city*" NFL Constitution and By-Laws, Section 3.4 (Emphasis supplied).

from the presence of an NFL franchise. The city must provide suitable accommodations for its team, and provide a full complement of support services to ensure that the public is adequately protected.

The construction and maintenance of a stadium constitute a substantial commitment of public resources. The cost is borne by patrons in the form of admission taxes, and by taxpayers in the form of debt service on bonds. For example, Baltimore's first stadium was financially unsuccessful and considered a civic extravagance for many years after its construction in 1922. *Memorial Stadium: Interim Report of Progress,* Jewell, Downing and Associates (1983) at p. 5. The present Memorial Stadium was completed in 1954, and was financed through bond issues. In the past four fiscal years, the state of Maryland and Baltimore have allocated more than seven million dollars for capital improvements to the stadium. Further, research has shown that as many as 42% of Maryland residents may visit Memorial Stadium in a given year. *Ibid.,* p. 8.

The opinion of the Court of Appeals affirmed the district court's rejection of NFL's single entity and ancillary restraint defenses. *Los Angeles Memorial Coliseum Commission v. National Football League,* 726 F.2d 1381 (9th Cir. 1984). The key reason why the NFL's ancillary restraint defense was rejected is that the court thought that local governments should be capable of protecting themselves through the leases negotiated with member clubs. *Los Angeles Memorial Coliseum v. National Football League,* 726 F.2d at 1397; NFL Petition at 25a-26a. Baltimore's experience has disproved that notion.

Preservation of the NFL's authority to regulate the transfer of franchise is an important aspect of preserving the reason for investing in local sports teams. Market forces do not and will not set the terms of stadium leases

so that local governments are able to obtain reasonable financial protection for their investment. The economic burden of funding the construction of a stadium is profound. In Oakland's case, the stadium authority issued sixty million dollars in bonds, with payments extending to the next century. Oakland Petition, p. 3. In Baltimore's case, the State of Maryland had considered and approved a twenty-two million dollar package to renovate Baltimore's Memorial Stadium before the Colts slipped their reins. Additionally, Baltimore has required that concessionaires in the stadium spend more than two million dollars to improve facilities there.

The reason why market forces will never operate freely is that there is no equivalence between the revenue generated by a stadium lease and the benefits to the community at large. An NFL franchise produces its greatest benefit to a municipality in an indirect fashion. The nature of this "industry," as it was called by Mayor William Donald Schaefer,[7] is such that lease revenue is almost negligible compared to the ripple throughout the local economy of money spent by fans enjoying NFL football.

For example, the Colts paid Baltimore for the use of Memorial Stadium according to a formula, resulting in total payments to Baltimore of $149,728.00 for the 1983-84 season. Mayor Schaefer estimated before Congress that the Colts generated about twenty million dollars [per year] in economic benefit to Baltimore City.[8] Of course, this effect is very diverse, and it strengthens

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[7] *Profession Sports Antitrust Immunity,* Hearings Before the Committee on the Judiciary of the United States Senate, 97th Cong., 2d Sess. 225 (Statement of the Honorable William Donald Schaefer, September 16, 1982).

[8] *Ibid.*

segments of the economy ranging from payroll taxes for governments to patronage at restaurants and hotels.

Net Profit or (Loss) from the Operation of Memorial Stadium for the Benefit of the Baltimore Colts, by Fiscal Year

Fiscal Year	Lease Payments	Amusement/ Admissions Tax Receipts	Operational Costs [3]	Net Profit (Loss)
1984 [1]	$149,728.00	$399,988.00	$596,948.00	($ 47,222.00)
1983	$ 23,760.00 [2]	$163,804.00	$568,675.00	($381,111.00)
1982	$143,880.00	$378,369.00	$542,351.00	($ 20,102.00)

1. Baltimore's 1984 Fiscal Year begins July 1, 1983, and ends June 30, 1984.
2. Lease payments were significantly reduced by the NFL players' strike.
3. These costs do not reflect depreciation, renovation or replacement of the structure itself.

It is readily apparent that the rental paid to Baltimore pursuant to its lease with the Club represents only three-quarters of one percent of the total economic impact which the franchise had upon the City of Baltimore. It is impossible for a municipality to protect the varied and diverse economic interests of its inhabitants through the mechanism of a stadium lease. The inducement for a franchise to remain in a designated city is usually subsidized rental payments in exchange for the expectation of the continued presence of the team, and the panoply of benefits which flow therefrom. Damages at law against a defaulting or absconding franchise for breach of the lease agreement would return only a small fraction of what the local community lost.

Furthermore, the position that long-term leases afford cities the protection which their investments demand is not itself without risk of antitrust liability. Apart from undermining the ability of public authorities to rely on *league* agreements concerning the location of teams, the decisions below have other sweeping implications for public authorities in their dealings with individual teams. If, as the Court of Appeals held, agreements that limit the ability of stadia to secure tenants may unlawfully restrain competition in a stadium market irrespective of the volume of commerce involved (726 F.2d at 1394), then the

Court of Appeals' reasoning raises serious questions as to the validity of long-term stadium lease agreements between stadia and professional teams. Such agreements involve, by definition, stadia that are competitors of other stadia in such a market, and such agreements restrain competition among stadia in the same manner as the NFL's location agreement found unlawful in this case. Indeed, the Ninth Circuit itself has already held long-term stadium concession contracts to violate the Sherman Act. *Twin City Sportservice, Inc. v. Charles O. Finley & Co.*, 676 F.2d 1291, 1303-05 (9th Cir. 1982). *See also Hecht v. Pro Football, Inc.*, 570 F.2d 982, 996 (D.C. Cir. 1977), *cert. denied,* 436 U.S. 956 (1978) (stadium lease provision may violate Sherman Act although used for sound business reasons). The Court of Appeals thus ignored the evident implications of its own holdings in suggesting that long-term stadium leases will adequately protect local governments in the absence of a league say on team location matters.

II. "Rule of Reason" Analysis Under the Sherman Act Must Include considerations of Public Interest.

The Court of Appeals declined to find that Section 4.3 of the NFL's Constitution and By-laws was a *per se* violation of the Sherman Act, 15 U.S.C. section 1. The court's decision was therefore predicated upon its determination "whether [Section 4.3] reasonably serves the legitimate collective concerns of the owners or instead permits them to reap excess profits at the expense of the consuming public." 726 F.2d at 1392; NFL Petition at 16a. This was essentially the factual question presented to the jury, but without any instruction that it could consider matters of public interest, or the pro-competitive effects which would be lost by a city when a sports franchise abandoned it. Oakland Petition, pp. 12-18.

The court's assessment of the reasonableness of Section 4.3 depended, in part, on its observation that stadia are distinct economic entities, and areas or territories are not. In a rule of reason analysis, the finder of fact should consider the reasonableness of the actions complained of in light of all of the circumstances. *Arizona v. Maricopa County Medical Society,* 457 U.S. 332 (1982). The NFL correctly argued that it is places, not stadia, which compete for NFL franchises. Baltimore's experience has demonstrated that the Maryland General Assembly treats the presence of professional sports as a matter of state-wide importance, and has offered throughout the years to support sports franchises with state dollars. The Mayor and City Council of Baltimore have made every attempt to provide for sports teams and their patrons the highest quality stadium allowed by its budget.

The financing of sites for the exhibition of NFL football and the support of the teams are largely public responsibilities. The prestige associated with professional sports franchises, especially successful ones, and the direct and diffuse economic benefits are great enhancements to a city.

As set forth above, cities with existing stadia are often willing or required to subsidize the actual cost of public facilities in order to attract or retain sports franchises. Cities which lure franchises to their domain must incur profound debt to construct the sort of stadium which is attractive to franchise owners.

The condition of Baltimore's Memorial stadium was an area of controversy in the aborted negotiations between the Colts' management and Baltimore's city officials. Team owners are in a position to demand that stadia have elegantly appointed accommodations befitting the owners of multimillion dollar enterprises. The State of Maryland had undertaken to sponsor a twenty-two million dollar

bond issue to renovate its stadium, contingent upon having a 15-year lease ratified by the Colts and the Orioles. Chapter 529, Laws of Maryland (1980).[9] Had the Club left Baltimore after the 1984-85 season, and after the bond issue, the taxpayers of Maryland would have found themselves saddled with payments to improve a stadium empty for much of the year.

Certainly the public interests of the home territory of a team are to be considered in an assessment of whether actions taken to restrain a team's relocation are reasonable. Given the enormous public investment in professional sports, whether provided directly for a league's "product" or indirectly from the public treasury, precedent that public interest may not be considered under a rule of reason analysis will have a devastating effect upon every city's ties with professional sports.

This Court has found that the antitrust laws are first and foremost consumer welfare laws, designed to protect the public from the economic burdens imposed by unreasonable business agreements. When such agreements or combinations are "unresponsive to consumer preference," the likelihood increases that a violation of antitrust laws will be found. *NCAA v. Board of Regents*, ___ U.S. ___, 104 S. Ct. 2948 (1984). Where, as in the case of the National Football League, the consumer's interest is served and protected through control over franchise location and relocation, public interest considerations

[9] The period in which the leases were to be ratified was extended through June 1, 1983, by Chapter 552, Laws of Maryland (1982). The bond authorization was modified by Chapter 496, Laws of Maryland (1983), which reduced the authorized issue to $15 million, and further provided that $7.5 million may be made available upon the signing of a six-year lease by either team.

should be given great importance. The Court of Appeals' analysis fails to protect adequately the interests of the taxpayers of the abandoned designated city.

CONCLUSION

The petition for a writ of certiorari submitted by the National Football League (No. 84-406) should be granted, and the petition for a writ of certiorari submitted by the Oakland-Alameda, Coliseum, Inc. (No. 84-418) should be granted with respect to the third, fourth and fifth questions presented.

Respectfully submitted,

BENJAMIN L. BROWN,
City Solicitor,
* AMBROSE T. HARTMAN,
Deputy City Solicitor,
L. WILLIAM GAWLIK,
Assistant City Solicitor,
City Hall,
Baltimore, Maryland 21202
(301) 396-3298,
Attorneys for Mayor and
City Counsel of Baltimore,
Amicus Curiae.

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* *Counsel of Record*